IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4556 of 2006

Date of Decision: November 26, 2007

The Executive Engineer HVPNL & another .....Petitioners

Versus

Smt.Shakuntla and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Praveen Gupta, Advocate for the petitioners.

Mr.Sanjay Vashisth, Advocate for respondents No.1 to 3.

S. D. ANAND, J.

1. Respondents No.1 to 3 i.e. Mst.Shakuntla and her two children filed a Civil Suit filed under the Fatal Accident Act, 1955 to claim damages of Rs.3 lacs as damages in respect of the death of Tulsi Ram, husband of respondent No.1 and father of respondents No.2 and 3 who died of electrocution on 30.6.1999 by coming into contact with the electric wires passing over the roof of his house. That claim was partly decreed by the then Civil Judge (Junior Division), vide judgment and decree dated 25.3.2002. While upholding the entitlement of respondents No.1 to 3 to damages, the learned Trial Court felt handicapped to assess the damages to be awarded for want of adequate evidence. In the face of that handicap, the learned trial Court held that “the plaintiff is entitled for the damages which can be assessed on the basis of the claim being filed by the plaintiff. The

defendants shall treat the plaint as claim filed by the plaintiff for an amount of Rs.3,00,000/- (three lacs) on the ground stated in the plaint itself. The defendants shall adjudicate upon the claim of the plaintiff within two months."

2. Before granting the above direction, the learned Trial Court had noticed the averments on behalf of the petitioners that the deceased was an agriculturist and was earning a sum of Rs.2500-3000/- per month. In the light thereof, it was ordered by the learned Trial Court that "the damages/claim can be given in favour of the plaintiff keeping in view the principle of minimum wages."

3. In short, thus, the defendant-petitioners were directed to adjudicate upon the claim of the respondents to damages keeping in view the principle of minimum wages. The further direction of the learned Trial Court was that the defendants shall treat the plaint as claim filed by the plaintiff for an amount of Rs.3,00,000/- (three lacs) on the ground stated in the plaint itself. The adjudication was made a time-bound affair inasmuch as the defendant-petitioners were directed to render the adjudication within two months from 25.3.2002. That judgment would be inferred to have attained finality inasmuch as there is no averment that it had been challenged before any higher Court.

4. As the petitioners did not adjudicate the claim within the two months' period granted by the learned Trial Court, the respondents were impelled to file an execution application (Annexure P2) on 29.4.2004.

5. The petitioners – judgment-debtors challenged the maintainability of the execution application on the plea that "the D.H. is not coming forward in person to complete the necessary formalities for the

settlement of the claim." In elaboration of the above quoted averment, it was pleaded that "in order to implement, the said judgment and decree dated 25.3.2002, the JDs sent letters dated 20.8.2003 and 22.10.2003 to the decree holder, whereby demanding certain documents that the claim could be sent to the higher authorities for a settlement. "The JDs also sent special messenger to the residence of the Decree-holder, wherein it was found that the D.H. was residing in Azad Nagar, Ballabgarh and the said Azad Nagar has been completely demolished by the MCF/HUDA authority Faridabad and whereabout of the decree holder was not available and thereafter the JD sent letter dated 28.10.2003 to the counsel of the D.H. thereby requesting him to advice his client to appear in person in the electricity Deptt. Along with the requisite documents so that the claim could be settled and be sent to the higher authorities but till date the DH has never appeared in the office of the J.Ds. Further it is submitted that the papers of the JD were sent to the higher authorities but the same were returned with the objections, regarding absencne of proof of income and photograph & written proof. However, it is submitted that the counsel of the D.H. has submitted a letter undated to the effect that Pt.Tulsi was carpenter with M/s Om Timber but the said letter does not bear the stamp of the timber and the said letter is not authenticated to prove his income, and the same was returned to the decree holder on the very same day."

6. After hearing the parties, the learned Additional Civil Judge, Senior Division, (the present Executing Court) noticed the harassment which respondent No.1 was undergoing on account of the attitude of the petitioners and directed the personal appearance of the present incumbents of the Office of Executive Engineer and Sub Divisional Officer in the Court.

Thereafter, vide order dated 27.7.2006, the learned Executing Court noticed that the judgment-debtor had delivered a cheque of Rs.50,000/- on the preceding date of hearing, that the cheque had been received by Mst.Shakuntla under protest and that she had insisted for award of compensation of Rs.2 lacs. The Executing Court noticed that "since, the J.D. is entitled for at least Rs.2 lacs, hence, the submission of cheque of Rs.50,000/- by the JD is against the final order." Thereafter, the Court noticed the absence of the Executive Engineer in compliance with the orders dated 20.5.2006 and ordered the attachment of the (official) vehicles of the Executive Engineer and the Sub Divisional Officer.

7. Judgment-debtor – petitioners have filed the present revision petition to challenge the validity of both the impugned orders i.e. 20.5.2006 and 27.7.2006.

8. Learned counsel for the judgment-debtors argued, at the very outset, that the learned Trial Court having left the job of assessment of damages to the Competent Authority, it could not have recorded a finding in the order dated 27.7.2006 that the respondents are entitled to a compensation of Rs.2 lacs.

9. The plea merits acceptance. As already noticed, the learned Trial Court had decreed the suit in part and directed the Competent Authority to adjudicate upon the claim raised by respondents No.1 and 2 within two months. That period was to be computed with effect from the date of judgment and decree dated 25.3.2002. Of course, the learned trial Court had indicated the basis for determination the amount of compensation. At the same time, it is apparent that no further material was available to the learned Executing Court on the basis whereof it could have

held that the respondents – decree-holder are entitled to a compensation of Rs.2 lacs. In that view of things, the finding by the learned Executing Court in the course of order dated 27.7.2006 to that effect is not sustainable and shall stand set aside.

10. However, the plea raised by the judgment-debtor petitioners with regard to the invalidation of the orders directing the personal appearance of the officials (petitioner No.1 and the Sub Divisional Officer-proforma respondent No.5 in the petition before this Court) and also attachment of their vehicles deserves to be negatived. As already indicated, the direction of the learned Trial Court to the petitioners was to adjudicate upon the claim of respondents within two months which time was to be computed w.e.f. 25.3.2002. As averred by none else or other than the petitioner – judgment-debtors themselves in the course of the objections (Annexure P3), they sent letters dated 20.8.2003 and 22.10.2003 to the respondents vide which addressee respondents were called upon to furnish certain documents. There was also an averment in the course of objections that a special messenger was also sent to the residence of the respondent who was residing in Azad Nagar but it was found that Azad Nagar had been completely demolished by the MCF/HUDA authority Faridabad and whereabouts of the decree holder were not available. Thereafter, judgment-debtor – petitioners sent a letter dated 28.10.2003 to the learned counsel for the respondents, vide which he was requested to advise the respondents to appear in person before the petitioners, along with the relevant documents.

11. The averments, made in the course of the reply, do not contain a verification. There is no indication that those averments were supported by an affidavit. Even if the averments made in the course of the objections

are taken to be gospel truth, it is the own plea of the judgment-debtor – petitioners that the respondents were addressed for the first time on 20.8.2003 which was obviously beyond the period within which they had been directed by the learned Trial Court to adjudicate upon the claim of the respondents. It is, thus, obvious that the order of the Civil Court for time-bound adjudication was not complied with. There is no averment either that any extension of time was applied for by the petitioners. If the petitioners were experiencing any handicap in contacting the respondents or obtaining certain relevant documents from them, they ought to have explained the position to the learned Trial Court and obtained extension of time for the time bound adjudication.

12. As already noticed, the petitioners handed over a cheque of Rs.50,000/- to respondent - Mst.Shakuntla. A copy of the relatable order has been placed on file as Annexure P4. That order is dated 2.6.2006. Vide it, the Chief Engineer concerned accorded sanction of payment of Rs.50,000/- as ex-gratia to respondents No.1 to 3. Obviously, Annexure P4 does not purport to be an adjudication of the claim in terms of the guidelines given by the learned Trial Court, vide judgment and decree dated 25.3.2002.

13. The following position can, thus, be safely culled out from the above discussion. The appellants had violated the orders of the Court by not honouring the orders for the time bound adjudication of the claim. The legal infraction was compounded by the petitioners by according sanction to the payment of ex-gratia compensation of Rs.50,000/- to the respondents, vide order dated 2.6.2006. That amounted to nothing less than adding insult to the injury. The learned Trial Court committed no error of law in directing the personal appearance of the Executive Engineer and the Sub Divisional

Officer concerned in order to be able to explain the position to the Court "by making their statements". That is precisely what was indicated by the Executing Court in the impugned order. No fault can be found either with the order on point of attachment of the official vehicles of the Executive engineer and Sub Divisional Officer concerned inasmuch as the only object thereof is to impel the petitioners to comply with the directions of the Civil Court vide judgment and decree dated 25.3.2002.

14. As per the scheme of things, the majesty of law must prevail. All citizens must aid the upholding of law. It is to state the obvious that the liability in that behalf is particularly onerous on those charged with the duty of running the functional apparatus of the official instrumentality. Any act of a public servant impleading the process of justice would invite the frown of the law and the same would apply with equal rigour to sluggish culpable refrain on the part of an employee in complying with the orders of the Court.

15. In the light of foregoing discussion, the petition shall stand allowed in part. The order dated 27.7.2006 upholding the entitlement of the decree holders to a compensation of Rs.2 lacs is set aside. However, order dated 20.5.2006 and the other part of order dated 27.7.2006 shall stand upheld.

(S. D. ANAND)
JUDGE

November 26, 2007
SRM

Note: Whether referred to reporter ? Yes/No